

February 10, 2014

via electronic filing

Marlene H. Dortch
Secretary, Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentation
Closed Captioning Quality · CG Docket No. 05-231 · PRM-11-CG**

Dear Ms. Dortch,

On February 6, 2014, Claude Stout of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI) and Andrew Phillips of the National Association of the Deaf (NAD), (collectively, “Consumer Groups”), and Blake Reid of the Samuelson-Glushko Technology Law & Policy Clinic at Colorado Law (TLPC) discussed pending Commission action in the above-referenced matters with Courtney Reinhard of Commissioner Michael O’Rielly’s office. On February 7, 2014, the Groups, joined by Lise Hamlin of the Hearing Loss Association of America (HLAA) and Cheryl Heppner of the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), discussed the same topic with Chairman Tom Wheeler, Maria Kirby of Chairman Wheeler’s office, Kris Monteith and Karen Peltz Strauss of the Consumer and Governmental Affairs Bureau, and Greg Hlibok, Eliot Greenwald, and Suzy Rosen Singleton of the Disability Rights Office. On February 10, 2014, Mr. Reid spoke to Mr. Greenwald about the same topic.

We commended the Commission’s groundbreaking progress toward implementing closed caption quality standards, an issue that has remained of critical importance to the deaf and hard of hearing community for more than 15 years. We deeply appreciate the hard work of Chairman Wheeler’s office, members of the Consumer and Governmental Affairs and Media Bureaus, and our colleagues in the industry for their hard work on shaping an item that will dramatically improve access to video programming for consumers who are deaf or hard of hearing. We also recognize that achieving caption quality will be an ongoing process requiring collaborative action from the Commission, industry, and consumers, and stand ready to assist however we can in paving the road to full and equal access for all Americans. Bearing our strong support for the Commission’s approach to this issue, we reiterated several modest suggestions that we believe will further the accessibility goals at the core of the Commission’s quality standards.

ENT. We again urged the Commission to condition the continued use of the Electronic Newsroom Technique (“ENT”) for live programming on the implementation of substantial technological and process improvements by the video programming industry

that facilitate the same level of access offered by real-time captioning. In particular, we supported the Commission's review of the state of ENT one year after the adoption of quality standards. In reviewing the continued use of ENT, the Commission should call upon the industry to provide hard data that demonstrates:

- The extent to which ENT captioning meets the four quality principles of accuracy, completeness, synchronicity, and placement, including metrics for representative samples of programming compared to similar programming captioned in real-time;
- The quantity and percentage of uncaptioned programming, such as unscripted breaking news, that is delivered by stations in markets where ENT is permissible;
- The economic necessity for individual stations to continue using ENT in lieu of real-time captioning;
- The impact of ENT usage on the ability of consumers who are deaf or hard of hearing in markets outside the top 25 to access the unique local programming offered by stations in those markets;¹
- The extent to which consumers have filed complaints about ENT;
- The state of the market for real-time captioners; and
- Technological progress toward achieving improvements with ENT.

Complaint Handling and Enforcement. We are optimistic that the industry will rise to the challenge of the new quality standards with sufficient effort to ensure that complaints will be the exception and not the norm. However, the enforcement and forwarding to video programmers of complaints, in lieu of a private right of action for consumers, has successfully formed the backbone of the Commission's captioning rules since their inception. We strongly believe that a robust complaint system remains necessary both to facilitate constructive dialogue and communication between programmers, consumers, and the Commission to ensure that unexpected problems are resolved at an early stage before they languish and disenfranchise more consumers, and to maintain accountability at every level of the captioning ecosystem. We support the Commission's retention and extension of the existing closed captioning complaint system in the context of caption quality. We also urge the Commission to continue with a regime that facilitates consumer complaints either to a video programming distributor ("VPD") or the Commission itself, sharing of complaint information between VPDs and the Commission, and the provision of status information on complaints to consumers from both the Commission and VPDs.

¹ See *Remarks of Commissioner Ajit Pai*, Radio Show Luncheon (Sept. 23, 2013), available at <http://www.fcc.gov/document/commissioner-pai-remarks-radio-show-luncheon>.

We also support Commissioner Ajit Pai’s proposal to provide the public with easily accessible, detailed information about consumer complaints as part of a Commission-wide “dashboard.”² This information could provide a useful snapshot of trends and specific problem areas as they arise, such complaint types, particular quality issues, pendency periods, and ultimate resolutions.

We understand the Commission is reconsidering the use of an “enforcement ladder” and safe harbor for non-ENT-related caption quality issues and is re-examining the apportionment of responsibility for closed caption quality between VPDs and video programming providers (“VPPs”). We urge the Commission to ensure that its process facilitates low-burden, simple mechanisms for consumers to communicate captioning problems in a way that results rapid resolution of problems backed by strong enforcement actions, where appropriate, that ensure that the provision of high-quality captions is the norm rather than the exception.

Offline vs. Real-time Captions. Finally, we urged the Commission to ensure that its quality standards and best practices require the use of high-quality offline captions over lower-quality real-time captions wherever it is feasible to do so. Again, we recommend the use of offline captioning for all programs that are recorded far enough in advance to facilitate its use, and the offline re-captioning of real-time captioned programs that are rebroadcast at a later date.

We again urge the Commission to substantially narrow the class of “commercially reasonable” exceptions proposed by the National Cable & Telecommunications Association (“NCTA”) that would permit the use of real-time captions for prerecorded programming in a variety of circumstances unrelated to the feasibility of offline captioning.³ While we appreciate NCTA’s efforts to refine and explain these exceptions, we remain concerned that the uses of real-time captions proposed in NCTA’s best practices are overly broad and are likely to result in the use of real-time captioning purely as a cost-cutting matter rather than as a result of legitimate logistical barriers to the use of offline captioning.⁴ Accordingly, we again recommend that the Commission eliminate the majority of the “commercially reasonable” exceptions from NCTA’s proposed best

² See, e.g., *Remarks of Commissioner Ajit Pai*, Federal Communications Bar Association (Feb. 21, 2013), available at <http://www.fcc.gov/document/commissioner-pai-remarks-fcba>.

³ See *Ex Parte of NCTA*, CG Docket No. 05-231, Best Practices at 2-3 (Jan. 31, 2014), available at <http://apps.fcc.gov/ecfs/document/view?id=7521070356>.

⁴ See *Ex Parte of NCTA*, CG Docket No. 05-231, Best Practices at 2-3 (Feb. 7, 2014), available at <http://apps.fcc.gov/ecfs/document/view?id=7521071546>; *Ex Parte of NCTA*, CG Docket No. 05-231, at 1 (Feb. 6, 2014), <http://apps.fcc.gov/ecfs/document/view?id=7521071480>.

practices and replace them with a standard that requires the use of high-quality offline captions wherever feasible.

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Please don't hesitate to contact me if you have any questions regarding this filing.

Respectfully submitted,

/s/

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Cc:

Meeting attendees

Commissioner Michael O'Rielly